IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2696 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SC NANAVATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2696 of 1999

MR IS SUPEHIA for Petitioner No. 1

Mr. KL Pandya, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. A.S. Supehia for the petitioner and Mr. KL Pandya, learned AGP for the

respondents. According to the facts of the present case, the petitioner was serving as a Superintending Engineer in the State Government and he retired on 31.12.1996. According to the petitioner, a departmental inquiry was initiated against him by the charge sheet dated 25.11.1994 and after he retired on 31.12.1996, by order dated 16.11.1998, a monthly cut of Rs.200.00 on permanent basis from the pension of the petitioner has been imposed against him and therefore, the petitioner has approached this court by way of this petition.

Affidavit in reply has been filed by the respondents.

It was submitted by the learned advocate Mr.Supehia that the petitioner has received show cause notice and the findings of the inquiry officer from the respondents. According to him, reply thereto has been submitted by the petitioner on 8th December, 1997 which is at page 31 to 34. He also submitted that in response to the show cause notice, when the petitioner represented his case challenging the findings given by the inquiry officer as per the detailed reply dated 8.12.1997, the respondents have, after receiving reply and at the time of passing the order of punishment, not given any reasons as to why the reply of the petitioner has not been accepted before passing the order of punishment. He also submitted that there is no discussion at all to that effect for not accepting the reply of the petitioner. He submitted that the reply was given against the punishment sought to be imposed and for that also, while not accepting or discarding the reply, authority ought to have applied its mind and ought to have disclosed the reasons for not accepting the reply but no reasons are disclosed by the authority in the order of punishment and, therefore, it amounts to non application of mind by the authority and therefore on that ground alone, the order of punishment is required to be quashed and set aside.

As against that, it was the submission of the learned AGP Mr. Pandya on behalf of the respondent authorities that the respondents have filed affidavit in reply to the petition filed by the petitioner. He also submitted that the reply given by the petitioner to the show cause notice was considered by the respondent authority before passing the order of punishment and while passing the order of punishment, said reply was in active consideration of the respondent authorities and, therefore, the only contention raised by Mr. Supehia about non application of mind cannot be accepted. Save

and except these submissions, no other submissions were made by Mr. Pandya on behalf of the respondent authorities.

The submissions made by the learned advocates for the parties have been considered by me. After the respondent authority issued show cause notice and supplied the findings recorded by the inquiry officer to the petitioner while calling the explanation from the petitioner about the proposed punishment, the petitioner submitted detailed reply on 8.12.1997 which is at page 31 to 34 wherein various contentions including the contention that the findings have been vitiated and contradictory were raised and though the reply was submitted by the petitioner against the proposed punishment and though the findings recorded by the inquiry officer were challenged by the petitioner, the authority has not at all discussed as to what is the answer or explanation given by the petitioner and what are the contentions raised by the petitioner in his answer or explanation given by the petitioner and why the same are not acceptable and on what ground, they are not acceptable. Bare reading of the order in question would make it clear that it does not disclose anything in that regard and, therefore, this court is of the view that it amounts to non application of mind and it is an unreasoned order and, therefore, contrary to the law laid down by the apex court in the matter of Anilkumar versus Presiding Officer and others reported in 1985 SCC 1121 that the findings given by the inquiry officer are required to be reasoned one. Same principle would also apply to the facts of the present case. The respondents herein have also, after serving show cause notice as well as the findings of the inquiry officer to the petitioner and after receiving reply cum explanation of the petitioner as to why the punishment proposed should not be imposed, passed order of punishment without considering the reply of the petitioner and also without assigning any reason as to why the explanation tendered by the petitioner is not acceptable. Therefore, in absence of such discussion, in absence of reasons, I am of the opinion that the order in question is required to be quashed and set aside on that ground alone and without entering into other aspects of the matter.

Therefore, the petition is allowed. The order dated 16.11.1998 passed by the respondent authority is hereby quashed and set aside. Rule is made absolute accordingly. Respondents are directed to pay the amount deducted by them from the petitioner as per the impugned order dated 16.11.1998 within two months from the date of

receipt of copy of this order. There shall be no order as to costs.

Dt.10.9.2003. (H.K. Rathod,J.)

Vyas